UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y
★ SEP 10 2009 ★
BROOKLYN OFFICE

--X

R.L., a minor, by his Mother BRENDA SINGLETON, and J.R., a minor, by his Mother YVETTE MEYERS,

Plaintiffs,

-against-

CITY OF NEW YORK, KEVIN MALONEY, and JOHN and JANE DOE 1 through 10, individually and in their official capacities, (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants,

--X

COMPLAINT

Index No.: 09 3916

Jury Trial Demanded

TRAGER, J.

AZRACK, M.J.

Plaintiffs R.L., a minor, by his Mother BRENDA SINGLETON, and J.R., a minor, by his Mother YVETTE MEYERS, by their attorneys, Leventhal & Klein, LLP, complaining of the defendants, respectfully alleges as follows:

Preliminary Statement

1. Plaintiffs brings this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitution of the State of New York and the United States. Plaintiffs also assert supplemental state law claims.

JURISDICTION

2. The action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is found upon 28 U.S.C. §§1331, 1343 and 1367.

VENUE

4. Venue is properly laid in the Eastern District of New York under 28 U.S.C. § 1391(b), in that it is the District in which the claim arose.

JURY DEMAND

5. Plaintiffs respectfully demand a trial by jury of all issues in the matter pursuant to Fed. R. Civ. P. 38 (b).

PARTIES

6. At all relevant times herein plaintiff R.L. and J.R. were residents of Bronx County.[a] They were fifteen years of age at the time of the incident.

7. Defendant CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant CITY OF NEW YORK maintains the New York City Police Department ("NYPD"), a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the aforementioned municipal corporation, City of New York.

9. Defendant CITY OF NEW YORK maintains the New York City Department of Juvenile Justice ("DJJ"), a duly authorized public authority and/or juvenile correctional department, authorized to perform all functions of a juvenile correctional department as per the applicable sections of the aforementioned municipal corporation, City of New York.

10. That at all times hereinafter mentioned, the individually named defendants, KEVIN MALONEY, and JOHN and JANE DOE 1 Through 10 were duly sworn officers of said departments and were acting under the supervision of said departments and according to their

[a] The full names of the minor plaintiffs have been redacted pursuant to Federal Rule 5.2(a)(3).

official duties.

11. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City New York.

12. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

13. Each and all of the acts of the defendant alleged herein were done by said defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

FACTS

14. On June 13, 2008, beginning at approximately 4:45 p.m., plaintiffs were lawfully present on the Bronx-bound D train located in the vicinity of 36th Street and Fourth Avenue in Brooklyn, New York.

14. At the above mentioned location, the defendant NYPD police officers illegally and without any just cause grabbed and arrested the plaintiffs by placing handcuffs on their wrists.

15. The defendant NYPD police officers unlawfully imprisoned the plaintiffs or caused them to be imprisoned in an NYPD vehicle, and then in an NYPD precinct facility where they were booked on felony juvenile delinquency charges. The plaintiffs were eventually transferred to Bridges Juvenile Center, which is a secure detention facility for alleged Juvenile Delinquents and Juvenile Offenders operated by the New York City Department of Juvenile

Justice ("DJJ").

16. At the Bridges Juvenile Center, the plaintiffs were illegally strip searched by DJJ employees on or about June 14, 2008, in that both plaintiffs, and upon information and belief, others juveniles who were being processed at the time, were ordered to remove all of their clothes except a t-shirt, and to thereafter squat and cough during the intake process.

17. The plaintiffs were eventually re-booked by the defendants for processing through the "adult" system, despite the fact that they were both under sixteen at the time, insofar as they were being charged by the defendants with certain enumerated felony offenses under the New York Penal Law and/or the Criminal Procedure Law that called for prosecution in Criminal Court rather than Family Court.

18. The plaintiffs were arraigned in Kings County Criminal Court during the afternoon of June 16, 2008 on false charges under docket numbers 2008KN044626 and 2008KN044625 based on the statements and/or omissions of defendant KEVIN MALONEY.

19. Plaintiffs were released following their arraignments, but were compelled to return to Court to face the serious felony charges that were levied against them.

20. It was only after they testified before a Grand Jury that was empanelled as a direct result of the defendants' statements and/or omissions to the DA's office, which found that probable cause was lacking for the purported prosecution to proceed against the plaintiffs, that the prosecutions were dismissed, sealed, and otherwise deemed legal nullities.

21. All of the above-described events occurred while other NYPD officers and DJJ staff failed to intervene in the illegal conduct described herein.

22. As a result of the foregoing, the plaintiffs sustained, *inter alia*, physical injuries, emotional distress, embarrassment, and humiliation, and deprivation of their constitutional rights.

Federal Claims

AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of Rights under 42 U.S.C. § 1983)

23. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "22" with the same force and effect as if fully set forth herein.

24. All of the aforementioned acts of defendants, their agents, servants and employees were carried out under the color of state law.

25. All of the aforementioned acts deprived plaintiffs of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

26. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto.

27. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

28. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

AS AND FOR A SECOND CAUSE OF ACTION
(False Arrest/Unlawful Imprisonment under 42 U.S.C. § 1983)

29. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in

paragraphs numbered "1" through "28" with the same force and effect as if fully set forth herein.

30. Defendants arrested the plaintiffs without probable cause, causing them to be detained against their will for approximately three days each and subjected to physical restraints.

31. Defendants caused the plaintiffs to be falsely arrested and unlawfully imprisoned.

AS AND FOR A THIRD CAUSE OF ACTION
(Deprivation of Substantive Due Process under 42 U.S.C. § 1983)

32. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "31" with the same force and effect as if fully set forth herein.

33. The defendants conduct herein was an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment.

34. As a result of the foregoing, plaintiffs were deprived of their liberty and right to substantive due process, causing emotional and physical injuries.

AS AND FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution under 42 U.S.C. § 1983)

35. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "34" with the same force and effect as if fully set forth herein.

36. Defendants initiated, commenced and continued a malicious prosecution against the plaintiffs by transmitting false and/or misleading information to the Kings County District Attorney's Office that caused the plaintiffs to be prosecuted and to be the subject of a grand jury presentation.

37. As a result of the foregoing, plaintiffs were deprived of their liberty, endured illegal strip searches and other procedures and/or incidents that are incidental to being incarcerated, and were otherwise deprived of their right to be free from malicious prosecution.

AS AND FOR A FIFTH CAUSE OF ACTION
(Unlawful Strip Search under 42 U.S.C. § 1983)

38. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "37" with the same force and effect as if fully set forth herein.

39. The plaintiffs were strip searched during the intake process at the Bridges Juvenile Center in the absence of individualized reasonable suspicion that plaintiffs possessed or were secreting any contraband or weapon at the time the searches were conducted.

40. As a result of the aforementioned conduct of defendants, plaintiffs' clearly established Fourth and/or Fourteenth Amendment Rights were violated.

AS AND FOR A SIXTH CAUSE OF ACTION
(Failure to Intervene under 42 U.S.C. § 1983)

41. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "40" with the same force and effect as if fully set forth herein.

42. Defendants had an affirmative duty to intervene on behalf of plaintiff ISA MARTIN, whose constitutional rights were being violated in their presence by other officers.

43. The defendants failed to intervene to prevent the unlawful conduct described herein.

44. As a result of the foregoing, plaintiffs were put in fear of their safety, they were humiliated, and subjected to unjustified strip searches and incarceration.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Supervisory Liability under 42 U.S.C. § 1983)

45. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "44" with the same force and effect as if fully set forth herein.

46. The supervisory defendants personally caused plaintiff's constitutional injuries by

being deliberately or consciously indifferent to the rights of others in failing to properly supervise and train their subordinate employees.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Municipal Liability under 42 U.S.C. § 1983)

47. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "46" with the same force and effect as if fully set forth herein.

48. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

49. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York Police Department included, but were not limited to, a policy, custom or practice of inadequate screening, hiring, retaining, training and supervising its employees that was the moving force behind the violation of plaintiffs' rights as described herein. As a result of the failure of the City of New York to properly recruit, screen, train, discipline, and supervise its officers, , defendant CITY OF NEW YORK has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

50. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of the plaintiffs.

51. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by the plaintiffs as alleged herein.

52. The foregoing customs, policies, usages, practices, procedures and rules of the

City of New York and the New York City Police Department were the moving force behind the Constitutional violations suffered by the plaintiffs as alleged herein.

53. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs were, among other things, illegally strip searched.

54. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating plaintiffs' constitutional rights.

55. All of the foregoing acts by defendants deprived plaintiffs of their federally protected rights, including, but not limited to, the right:

A. To be from false arrest;

B. To be free from malicious prosecution and/or abuse of process;

C. To be free from unlawful strip searches; and

D. To be free from the failure to intervene.

56. As a result of the foregoing, plaintiffs are entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury.

Supplemental State Law Claims

57. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "56" with the same force and effect as if fully set forth herein.

58. Within ninety (90) days after the claim herein accrued, plaintiffs duly served upon, presented to and filed with the City of New York, a Notice of Claim setting forth all facts and information required under the General Municipal Law 50-e.

59. The City of New York has wholly neglected or refused to make an adjustment or

payment thereof and more than thirty (30) days have elapsed since the presentation of such claim as aforesaid.

60. The action was commenced within one (1) year and ninety (90) days after the cause of action herein accrued.

61. Plaintiffs have complied with all conditions precedent to maintaining the instant action.

62. This action falls within one or more of the exceptions as outlined in C.P.L.R. 1602.

AS AND FOR A NINTH CAUSE OF ACTION
(Assault under the laws of the State of New York)

63. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "62" with the same force and effect as if fully set forth herein.

64. As a result of the foregoing, plaintiffs were placed in apprehension of imminent harmful and offensive bodily contact.

AS AND FOR A TENTH CAUSE OF ACTION
(Battery under the laws of the State of New York)

66. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "65" with the same force and effect as if fully set forth herein.

67. Defendants made offensive contact with the plaintiffs without privilege or consent.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(False Arrest under the laws of the State of New York)

68. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "67" with the same force and effect as if fully set forth herein.

69. Defendants arrested the plaintiffs without probable cause.

70. The plaintiffs were detained against their will for approximately three days each, and subjected to physical restraints.

71. As a result of the aforementioned conduct, the plaintiffs were unlawfully imprisoned in violation of the laws of the State of New York.

72. As a result of the aforementioned conduct, the plaintiffs suffered physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Malicious Prosecution under laws of the State of New York)

73. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "72" with the same force and effect as if fully set forth herein.

74. Defendants initiated, commenced and continued a malicious prosecution against the plaintiffs by transmitting false and/or misleading information and/or by omitting critical evidence of plaintiffs' innocence to the Kings County District Attorney's Office, that caused plaintiffs to be prosecuted and incarcerated.

75. As a result of the foregoing, the plaintiffs were deprived of their liberty, were illegally strip searched at the Bridges Juvenile Center, and were otherwise deprived of their right to be free from malicious prosecution.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
(Unlawful Strip Search under the laws of the State of New York)

76. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "75" with the same force and effect as if fully set forth herein.

77. Plaintiffs were strip searched by the defendant DJJ employees, despite the lack of any individualized reasonable suspicion that plaintiffs may have been in possession of

contraband or a weapon at the time the searches was conducted.

78. As a result of the aforementioned conduct of defendants, plaintiffs were strip searched in violation of the New York State Constitution and common law.

AS AND FOR A FOURTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress under the laws of the State of New York)

79. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "78" with the same force and effect as if fully set forth herein.

80. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

81. The aforementioned conduct was committed by defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

82. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

83. The aforementioned conduct was intentional and for the sole purpose of causing severe emotional distress to the plaintiffs.

AS AND FOR A FIFTEENTH CAUSE OF ACTION
(Negligent Screening, Hiring, and Retention under the laws of the State of New York)

84. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraph numbered "1" through "83" with the same force and effect as if fully set forth herein.

85. Upon information and belief, defendant City of New York failed to use reasonable care in the screening, hiring and retention of the aforesaid defendants who conducted and participated in the arrest, prosecution, and strip searches of the plaintiffs.

86. Defendant City of New York knew, or should have known in the exercise of reasonable care, the propensities of the individual defendants to engage in the wrongful conduct heretofore alleged in the Complaint.

AS AND FOR A SIXTEENTH CAUSE OF ACTION
(Negligent Training and Supervision under the laws of the State of New York)

87. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "86" with the same force and effect as if fully set forth herein.

88. Upon information and belief the defendant City of New York failed to use reasonable care in the training and supervision of the aforesaid defendants who conducted and participated in the arrest, prosecution and strip searches of the plaintiffs.

AS AND FOR A SEVENTEENTH CAUSE OF ACTION
(Negligence under the laws of the State of New York)

89. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "88" with the same force and effect as if fully set forth herein.

90. Plaintiffs' injuries herein were caused by the carelessness, recklessness and negligence of the defendant City of New York and its employees and agents, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

AS AND FOR AN EIGHTEENTH CAUSE OF ACTION
(*Respondeat Superior* liability under the laws of the State of New York)

91. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "90" with the same force and effect as if fully set forth herein.

92. Defendant City of New York is vicariously liable for the acts of its employees and agents who were on duty and acting in the scope of their employment when they engaged in the

wrongful conduct described herein.

WHEREFORE, plaintiffs demand judgment and pray for the following relief, jointly and severally, against the defendants:

(A) full and fair compensatory damages in an amount to be determined by a jury:

(B) punitive damages in an amount to be determined by a jury:

(C) reasonable attorney's fees and the costs and disbursements of their action; and

(D) such other and further relief as appears just and proper.

Dated: Brooklyn, New York
September 3, 2009

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By: ______________________
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